

same tract or parcel of land as a single property, each of the remaining properties included within such tract or parcel of land shall be treated as a separate property. If the taxpayer has treated two or more properties that are included within the same tract or parcel of land as a single property and subsequently discovers or acquires an additional mineral deposit within the same tract or parcel of land, he may include his interest in such deposit with the two or more properties which are being treated as a single property or he may treat his interest in such deposit as a separate property. If the taxpayer has treated each property included within a tract or parcel of land as a separate property and subsequently discovers or acquires an additional mineral deposit within the same tract or parcel of land, he may combine his interest in such deposit with any one of the separate properties included within the tract or parcel of land, but not with more than one of them since they cannot be validly combined with each other. The taxpayer may not combine properties which are included within different tracts or parcels of land under this section irrespective of whether such tracts or parcels of land are contiguous. The treatment of a property as a separate property or the treatment of two or more properties included within a single tract or parcel of land as a single property under this section shall be binding upon the taxpayer for the first taxable year for which such treatment is effective and for all subsequent taxable years beginning before January 1, 1964. For the continuation of such treatment under § 1.614-8 for taxable years beginning after December 31, 1963, see paragraph (d) of § 1.614-8. For provisions relating to the first taxable year for which treatment under this section becomes effective, see paragraph (d) of this section.

(b) *Treatment consistent with treatment for taxable years prior to 1954.* If the taxpayer has treated properties in a manner consistent with the rules contained in paragraph (a) of this section for taxable years to which the Internal Revenue Code of 1939 applies and if the taxpayer desires to treat such properties under section 614(d), then such prop-

erties must continue to be treated in the same manner. The provisions of this paragraph may be illustrated by the following examples:

Example 1. In 1950, taxpayer A owned two separate tracts of land designated No. 1 and No. 2. Each tract contained three mineral deposits. In the case of tract No. 1, taxpayer A treated the three mineral deposits as a single property. In the case of tract No. 2, taxpayer A treated the first mineral deposit as a separate property and treated the second and third mineral deposits as a single property. This treatment was consistently followed for the taxable years 1950, 1951, 1952, and 1953. Taxpayer A desires, for 1954 and subsequent taxable years, to treat the properties in tracts Nos. 1 and 2 as if section 614 (a) and (b) had not been enacted. For 1954 and subsequent taxable years, the three deposits in tract No. 1 must be treated as a single property; the first deposit in tract No. 2 must be treated as a separate property; and the second and third deposits in tract No. 2 must be treated as a single property.

Example 2. Assume the same facts as in example 1 except that, at the time the treatment under this section is adopted, assessment of any deficiency or credit or refund of any overpayment for the taxable years 1954 and 1955 resulting from the treatment of properties under this section is prevented by the operation of the statute of limitations. For 1956 and subsequent taxable years, the three deposits in tract No. 1 must be treated as a single property; the first deposit in tract No. 2 must be treated as a separate property; and the second and third deposits in tract No. 2 must be treated as a single property.

(c) *Bases of separate properties previously included in an aggregation under section 614(b).* If the taxpayer has made an election under section 614(b) to form an aggregation of operating mineral interests and if such taxpayer subsequently revokes such election for all taxable years for which it was made and treats the properties that are included within such aggregation under section 614(d) and this section by filing the statement required by paragraph (e) of this section, then the adjusted basis of each separate property (as defined in paragraph (a) of this section) that is a part of such aggregation shall be determined as if the taxpayer had made no election under section 614(b). However, if, at the time of the filing of the statement revoking the election under section 614(b), assessment of any deficiency or credit or refund of any

overpayment, as the case may be, resulting from such revocation is prevented by the operation of any law or rule of law for any taxable year or years for which the election under section 614(b) was made, then the adjusted basis of each separate property that is a part of the aggregation shall be determined in accordance with the provisions contained in paragraph (a)(2) of § 1.614-6 as of the first day of the first taxable year for which the revocation is effective. After determining the adjusted basis of each separate property included within the aggregation, the taxpayer may treat such properties in any manner which is in accordance with paragraph (a) of this section. See, however, paragraph (b) of this section. The provisions of this paragraph may be illustrated by the following examples:

Example 1. Taxpayer A owns two separate tracts of land, designated No. 1 and No. 2, each of which contains three mineral deposits. The interests in the two tracts of land constitute an operating unit as defined in paragraph (c) of § 1.614-2. Taxpayer A elects under section 614(b) to form an aggregation of all the interests in the operating unit for 1954 and all subsequent taxable years. Subsequently, taxpayer A revokes such election by filing a statement in accordance with paragraph (e) of this section. Such revocation is effective for 1956 and subsequent taxable years because, at the time of the filing of the statement of revocation, assessment of any deficiency or credit or refund of any overpayment for the taxable years 1954 and 1955 resulting from such revocation is prevented by the operation of the statute of limitations. The adjusted bases of the six properties that are included within the aggregation shall be determined in accordance with paragraph (a)(2) of § 1.614-6 as of the beginning of the taxable year 1956.

Example 2. Assume the same facts as in example 1 and, in addition, assume that for taxable years to which the Internal Revenue Code of 1939 is applicable, taxpayer A treated the three deposits in tract No. 1 as a single property and the three deposits in tract No. 2 as a single property. After determining the adjusted basis of each of the six properties as illustrated in example 1, the adjusted basis of the three properties in tract No. 1 must be combined and the adjusted bases of the three properties in tract No. 2 must be combined since the manner in which such properties were treated for taxable years to which the Internal Revenue Code of 1939 is applicable is consistent with the rules contained in paragraph (a) of this section.

(d) *Treatment; when effective.* If a taxpayer treats any property in accordance with this section, then such treatment shall be effective for whichever of the following taxable years is the later:

(1) The latest taxable year for which an election could have been made with respect to such property under section 614(b); or

(2) The first taxable year beginning after December 31, 1953, and ending after August 16, 1954, in respect of which assessment of a deficiency or credit or refund of an overpayment, as the case may be, resulting from the treatment of such property under this section, is not prevented by the operation of any law or rule of law on the date such treatment is adopted.

(e) *Manner of adopting the treatment of properties under this section.* If the taxpayer does not make an election under section 614(b) with respect to a property within the time prescribed for making such an election, then the taxpayer shall be deemed to have treated such property under this section. In such case, the manner in which such property is treated in filing the taxpayer's income tax return for the first taxable year for which the treatment of such property is effective under paragraph (d) of this section shall establish the treatment which must be consistently followed with respect to such property for subsequent taxable years. However, if the income tax return for such first taxable year is filed prior to May 1, 1961, then the taxpayer may adopt the treatment provided for under this section with respect to the property by filing a statement at any time on or before May 1, 1961, with the district director for the district in which the taxpayer's income tax return was filed for the first taxable year for which the treatment of such property is effective under paragraph (d) of this section. Such statement shall set forth the first taxable year for which the treatment of the property under this section is effective, shall revoke any previous elections made with respect to such property under section 614(b), shall state the manner in which such property was treated for taxable years subject to the Internal Revenue Code of 1939, shall state the manner in which such property is to be treated under

this section, and shall be accompanied by an amended return or returns if necessary.

(f) *Certain treatment under this section precludes election to aggregate under section 614(b) with respect to the same operating unit.* If the taxpayer's treatment of any properties that are included within an operating unit (as defined in paragraph (c) of § 1.614-2) under section 614(d) and this section would constitute an aggregation under section 614(b) and if such taxpayer elects, or has elected, to form an aggregation within the same operating unit under section 614(b) for any taxable year for which the treatment under section 614(d) is effective, then the election made under section 614(b) shall not apply for any such taxable year.

[T.D. 6524, 26 FR 157, Jan. 10, 1961, as amended by T.D. 6859, 30 FR 13700, Oct. 28, 1965]

§ 1.614-5 Special rules as to aggregating nonoperating mineral interests.

(a) *Aggregating nonoperating mineral interests for taxable years beginning before January 1, 1958.* Upon proper showing to the Commissioner, a taxpayer who owns two or more separate nonoperating mineral interests in a single tract or parcel of land, or in two or more contiguous tracts or parcels of land, shall be permitted to aggregate all such interests in each separate kind of mineral deposit and treat them as one property. Permission will be granted by the Commissioner only if the taxpayer establishes that he will sustain an undue hardship if such nonoperating mineral interests are not treated as one property. Such hardship may exist, for example, if it is impossible for the taxpayer to determine the boundaries, source, or costs of the separate interests, or if a taxpayer who owns a single royalty interest, production payment, or net profits interest cannot determine the separate deposits from which his payments will be derived. In no event shall undue hardship be deemed to exist solely by reason of tax disadvantage. The treatment of such interests as one property shall be applicable for all purposes of subtitle A of the Internal Revenue Code of 1954. In no event may nonoperating mineral interests in tracts or parcels of land which are not contiguous be treated as

one property. The term *two or more contiguous tracts or parcels of land* means tracts or parcels of land which have common boundaries. Common boundaries include survey lines, public roads, or similar easements for the use of land without the existence of an intervening mineral right between the tracts or parcels of land. Tracts or parcels of land which touch only at a common corner are not contiguous. For the definition of *nonoperating mineral interests*, see paragraph (g) of this section.

(b) *Manner and scope of election—* (1) *Time for filing application for permission to aggregate separate nonoperating mineral interests under paragraph (a) of this section.* The application for permission to aggregate separate nonoperating mineral interests under paragraph (a) of this section shall be filed at any time on or before May 1, 1961. Such application shall indicate the first taxable year for which the aggregation is to be formed. If, prior to January 10, 1961, an application has been filed, the taxpayer need file only a supplemental application containing such additional information as is necessary to comply with the requirements of subparagraph (2) of this paragraph.

(2) *Contents of application and returns under permission.* The application for permission to aggregate nonoperating mineral interests under paragraph (a) of this section shall include a complete statement of the facts upon which the taxpayer relies to show the undue hardship which would result if such an aggregation was not permitted. Such application shall also include a description of the nonoperating mineral interests owned by the taxpayer within the tract or tracts of land involved. A general description, accompanied by maps appropriately marked, which accurately circumscribes the scope of the aggregation and shows that the taxpayer is aggregating all the nonoperating mineral interests in a particular kind of mineral deposit within the tract or tracts of land involved will be sufficient. If the Commissioner grants permission, a copy of the letter granting such permission shall be filed with the district director for the district in which the taxpayer's income tax return was filed for the first taxable year for which such permission applies, and

shall be accompanied by an amended return or returns if necessary.

(3) *Election; binding effect.* The election to aggregate separate nonoperating mineral interests under paragraph (a) of this section shall be binding upon the taxpayer for the first taxable year for which made and all subsequent taxable years beginning before January 1, 1958, unless consent to make a change is obtained from the Commissioner. The application for consent to make a change must set forth in detail the reason or reasons for such change. Consent to a different treatment shall not be granted where the principal purpose for such change is due to tax consequences. For rules relating to the binding effect of an election where the basis of an aggregated property in the hands of the transferee is determined by reference to the basis in the hands of the transferor, see paragraph (c) of § 1.614-6.

(4) *Aggregations under the Internal Revenue Code of 1939.* An application for permission to aggregate nonoperating mineral interests under paragraph (a) of this section shall be submitted in accordance with the requirements of this paragraph notwithstanding the fact that the taxpayer may have aggregated such interests for taxable years to which the Internal Revenue Code of 1939 is applicable. If such interests were aggregated for taxable years to which the Internal Revenue Code of 1939 applies and the aggregation was approved by the Internal Revenue Service for such years after full consideration thereof on its merits, such approval will generally be accepted as evidence that undue hardship would result if the aggregation were not permitted.

(c) *Termination of aggregation of nonoperating mineral interests—(1) General rule.* Any aggregation of nonoperating mineral interests formed under paragraphs (a) and (b) of this section shall not apply with respect to any taxable year beginning after December 31, 1957. Thus, if a taxpayer makes a binding election to form such an aggregation for taxable years beginning before January 1, 1958, then in order to form an aggregation with respect to any taxable year beginning after December 31, 1957, he must obtain permission in ac-

cordance with the rules prescribed in paragraphs (d) and (e) of this section.

(2) *Bases of separate nonoperating mineral interests.* If a taxpayer forms an aggregation of nonoperating mineral interests under paragraphs (a) and (b) of this section which is terminated under subparagraph (1) of this paragraph, the adjusted bases of the separate nonoperating mineral interests included in such aggregation shall be determined in accordance with paragraph (a)(2) of § 1.614-6.

(d) *Aggregating nonoperating mineral interests for taxable years beginning after December 31, 1957, or for earlier taxable years.* Upon proper showing to the Commissioner, a taxpayer who owns two or more separate nonoperating mineral interests in a single tract or parcel of land, or in two or more adjacent tracts or parcels of land, shall be permitted, under section 614(e), to form an aggregation of all of such interests in each separate kind of mineral deposit and treat such aggregation as one property. Permission shall be granted by the Commissioner only if the taxpayer establishes that a principal purpose in forming the aggregation is not the avoidance of tax. The fact that the aggregation of nonoperating mineral interests will result in a substantial reduction in tax is evidence that avoidance of tax is a principal purpose of the taxpayer. An aggregation formed under the provisions of this paragraph shall be considered as one property for all purposes of the Code. In no event may nonoperating mineral interests in tracts or parcels of land which are not adjacent be aggregated and treated as one property. The term *two or more adjacent tracts or parcels of land* means tracts or parcels of land that are in reasonably close proximity to each other depending on the facts and circumstances of each case. Adjacent tracts or parcels of land do not necessarily have any common boundaries, and may be separated by intervening mineral rights. For the definition of *nonoperating mineral interests*, see paragraph (g) of this section.

(e) *Manner and scope of election—(1) Time for filing application for permission to aggregate separate nonoperating mineral interests under section 614(e).* The application for permission to aggregate